EDITOR'S NOTE

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ISI INTERNATIONAL, INC.	)	
	)	
Plaintiff,	)	
	)	Case No. 98 C 7614
vs.	)	
	)	Judge Suzanne B. Conlon
BORDEN LADNER GERVAIS LLP,	)	
	)	
Defendant.	)	

DECLARATION OF GUY PRATTE

I, Guy J. Pratte, make the following declaration, in accordance with 28 U.S.C. §1746, in support of the Defendant's Rule 12(b) Motion in the above-captioned matter.

1. I am a lawyer licensed to practice law in the Province of Ontario, Canada, and I am a member in good standing of the Law Society of Upper Canada.

2. I am the managing partner of the Ottawa, Ontario office of Borden Ladner Gervais LLP ("BLG") and I also am a member of BLG's National Executive Committee. BLG was formed by five leading Canadian firms in March 2000. The relevant terms of that transaction are described in the Declaration of Sean Weir.

3. During 1996-97, the period when the events at issue in this case occurred, Scott & Aylen ("S&A") was comprised of two separate partnerships: one of Solicitors and Barristers and the other of Patent Agents. The two partnerships shared office space and various office services. The two partnerships did not share profits and they did not assume each other's liabilities. The two partnerships billed separately and maintained separate files. The two partnerships were

separately insured. A chart reflecting the insurance coverage for S&A's Lawyers is marked as Ex. A.[1]

4. S&A's Patent Agents also have $10 Million (CDN) of insurance, but their insurer, ENCON, has denied coverage for this claim under a territorial limit restricting coverage to claims filed in Canada. Copies of the ENCON Policy and the denial of coverage letter are marked as Ex. B.

5. As of January 1, 1998, S&A's Lawyers and S&A's Patent Agents agreed to combine their practices into a single partnership. That combination was structured as an Asset Purchase by S&A's Lawyers of the assets of the S&A Patent Agents' partnership. A copy of the Asset Purchase Agreement is marked as Ex. C. Incident to that Asset Purchase Agreement, S&A's Lawyer's acquired shares in a company in which S&A's Patent Agents had invested. A copy of that Share Purchase Agreement is marked as Ex. D.

6. As of January 1, 1998, certain S&A Lawyers and Patent Agents formed a new combined partnership and entered into a Partnership Agreement, a copy of which is marked as Ex. E. That Partnership Agreement expressly provides that liability of the predecessor Patent Agents' and Lawyers' partnerships, respectively, for claims such as ISI alleges, are not assumed by the other predecessor partnership:

> 2.3 Notwithstanding any other provisions of this Agreement, *the partners of each of the predecessor partnerships*, other than David Scott who was a partner of each of the predecessor partnerships, *shall not be liable for the negligent acts and omissions, if any, which were committed or done by partners of the other predecessor partnership prior to January 1, 1998* and for any claim or claims made at any time by one or more of the partners of the other predecessor partnership against some or all of the partners of that other predecessor partnership in respect of any matter or matters which existed prior to January 1, 1998. (Ex. E at ¶2.3, emphasis added)

[1] S&A's insurance coverage is Confidential under the Protective Order, as are Exs. B-E. Those exhibits have been bound separately and marked Confidential.

7. In the fall of 1998, S&A and Borden & Elliot, a Toronto firm, began discussing a possible combination of the two firms. In anticipation of that combination, S&A changed its name to Borden Elliot Scott & Aylen. But that combination never occurred as it was overtaken by the five firm combination by which BLG was formed, as described above and in Mr. Weir's Declaration.

8. A list of the individual partners of the S&A Lawyers' partnership and of the Patent Agent's partnership during 1996-97 is marked as Ex. F.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 13th day of September 2001.

Guy J. Pratte

In The United States District Court
For The Northern District of Illinois
Eastern Division

ISI International, Inc. *an Illinois corporation,*	
Plaintiff,	
vs.	
Scott & Aylen, *an Ontario partnership,*	
Defendant.	JURY TRIAL DEMANDED

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CLERK, U.S. DISTRICT COURT

98C 7614

JUDGE CONLON
MAGISTRATE JUDGE DENLOW

COMPLAINT

NOW COMES THE PLAINTIFF, ISI International, Inc., an Illinois corporation, and for its Complaint against Defendant Scott & Aylen, a partnership organized under the laws of the Province of Ontario, Canada, alleges as follows:

PART I
The Parties

1. Plaintiff, ISI International, Inc. (hereinafter "**ISI**"), is an Illinois corporation with a principal place of business at 72 Treasure Lane, Riverwoods, Illinois.

2. On information and belief, Defendant Scott and Aylen (hereinafter "**The Defendant Law Firm**") is a partnership organized under the laws of the Province of Ontario, Canada, with a principal place of business at 1000 - 60 Queen Street, Ottawa, Canada K1P 5Y7, which is engaged in, among other activities, the practice of law, including without exception the practice of patent law in the United States before the United States Patent and Trademark Office and includes as partners and/or attorneys practicing within the firm and/or patent agents practicing within the firm: John G. Alyen, David W. Scott, Laird J. Rasmussen, Peter C. P. Thompson, Prian A Carrol, William C. V. Johnson, Peter B. Annis, George D. Hunter, Thomas J. Marlay, James I. Minnes, J. Bruce Carr-Harris, Terrance J. McManus, Raj Anand, Marc Joliceur, Kenneth E. Sharpe, David A. Aylen, Peter K. Doody, Bernard G. Roach, Carole J. Brown, Jeremy Stuart T. Farr, Guy J. Pratte, Kevin P. Nearing, Graham J. Clarke, Walter V/ Do Cesare, Kevin LaRoche, Timothy J. McCunn, Yves J. Menard, Mark A. Babinski, Fay Kathleen Brunning-Howard, Martine Richard, Pierre E. Roger, David Sherriff-Scott, Jane M. Bachynski, May M. Cheng, Joanne E. Fox, Julie Rancourt, NoElle Caloren, Kent D. Howie, Andrew Pinto, Lawrance A. Elliot, M. Kate Stephenson, Lisa D. K. Johnson, John J. Urie, Keith Allen Flanigan, Anthony J. Graham, Edward B. O'Connor, J. Brook Keneford, Tracy I. Mosley, Max R. Wood, Jochin T. Fritz, Deborah G. Vandenhoff, Anita Nador and Jaspreet K. Kalra.

45. In January 1996, as the final step in the development of **The Improved CombiVac Invention**, **ISI** retained and paid for the services of The Design Workshop of 75 Colonnade Road, Nepean, Ontario, Canada, for the further design development of **The Improved CombiVac Invention** which was derived from the joint activities of **Jokari, Mr. Reitsma** and **ISI Canada** pursuant to the **Jokari/Reitsma Agreement**.

46. After the retention of the services of The Design Workshop, **Jokari** and its employees continued to consult with and to work with **Mr. Reitsma** and **ISI Canada** in the further design development of **The Improved CombiVac Invention** which was derived from the mutual activities of **Jokari, Mr. Reitsma** and **ISI Canada** pursuant to the **Jokari/Reitsma Agreement**.

47. Following the original order for 100,000 units of **The Improved CombiVac Invention**, Mr. Jan Heeger, of B Braun NPBI Medical b.v., in a letter of February 23, 1996 to Mr. Johannes A. Aschman, **president of ISI**, (a copy of which is attached hereto as **Exhibit K**) confirmed an increase in its original order, stating:

> "B. Braun NPBI Medical b.v. has committed an order to ISI of the new wounddrainage (sic) system COMBIVAC® to buy and sell within 12 months after the introduction. Delivery of 20,000 units as soon as possible. Our goal in 1997/1998 is to sell 210,000 units and in 1998/99 to sell 350,000 units."
>
> "We also received a commitment from the German dealer, who is going to sell the COMBIVAC® system as soon as it is available. The figures of Germany are: 12 month after introduction : 111,000 units, 1997/98 258,000 units and 1998/99 443,000 units. The German dealer is also interested in selling the the product in eastern Europe."

48. Based upon the projected sales to B Braun, and upon the recommendation of B Braun, **ISI** entered into a business relationship with Medimade B.V. in Oss, The Netherlands (hereinafter "**MEDIMADE**") to assemble the components for the **CombiVac** product in The Netherlands, for sale and delivery to B Braun for the European Market.

49. On information and belief, on or about April 12, 1996 , pursuant to instructions from **ISI**, **The Defendant Law Firm** voluntarily abandoned **The '936 Application**, which was the subject of the **Reitsma License**, and filed a new continuation-in-part application in the United States Patent and Trademark Office, (hereinafter the "**CIP Application**").

50. All of **The Defendant Law Firm's** services and disbursements relating to the preparation and filing of the **CIP Application** were billed by **The Defendant Law Firm** on its Invoice No. A0106728 (hereinafter the "'**728 Invoice**") directly to **ISI**, under the new client number assigned to **ISI** by **The Defendant Law Firm**, Account No. 3115. (***See Generally*** **Exhibit G**)

58. In or around September 1996, when **ISI** was still contemplating the acquisition of Philbia, N.V., **ISI** entered into negotiations with American Pharmaceutical Partners (hereinafter "**APP**") for the commercialization of **The Improved CombiVac Invention**.

59. On information and belief, **APP** controls in excess of eight billion dollars worth of the annual purchasing power for hospitals in the United States.

60. During the negotiations between **ISI** and **APP**, the representatives of **ISI** explained to the representatives of **APP** that **ISI** would probably be reorganizing in the near future, and that the company would probably be operating in the future as "Philbia N.V."

61. Further to the negotiations between **ISI** and **APP**, in late September or early October 1996 **APP** prepared and delivered to Mr. Johannes A. Aschman, president of **ISI** (who it had previously been anticipated would also become the president to be of Philbia, N.V.) a "Letter of Agreement" between **APP** and **Philbia** (hereinafter "**APP Proposal**").

62. The **APP Proposal** specified, in per pertinent part, as follows:

> "PHILBIA hereby agrees to exclusively license to APP within the Territory its rights to its Wound Drainage System ("Product") and any additions, improvements or expansions, as well as grant a right of first refusal for all future products developed by PHILBIA, for the following consideration.
>
> . . .
>
> "PHILBIA shall be entitled to royalties on the net sale of products sold by APP in terms of this Agreement. The royalty shall be determined as follows:
>
> | | | |
> |---|---|---|
> | (a) | On net sales up to $5 million | 4% |
> | (b) | On sales of $5,000,001 to $10,000,000 | 6% |
> | (c) | On sales of $10,000,001 to $20,000,000 | 8% |
> | (d) | On sales in excess of $20,000,000 | 10% |
>
> . . .
>
> "This agreement will remain in effect for the period of the term remaining on the patents or ten (10) years, whichever is less." (a true and accurate copy of the proposal from **APP**, bearing the notations of Mr. Aschman as per their further discussions, is attached hereto as **Exhibit N**)

63. After the **APP Proposal**, **ISI** decided not to acquire Philbia, N.V. and further discussions continued directly between **ISI** and **APP** regarding the **APP Proposal**.

64. The selling price for the products which were the subject of the **APP Proposal** was to have been in excess of $5.00 US per unit, and the minimum quantities proposed by **APP** for clinical trials were 400,000 units for 1997 and, 800,000 units for 1998.

142. On information and belief, as payment for its activities in December 1996 and January 1997, whereby **The Defendant Law Firm** caused injuries to its client, **ISI**, in the amount of $346,660,000.00 US, **The Defendant Law Firm** debited **ISI Client Funds retained by The Defendant Law Firm**.

143. On information and belief, in or about December 1996 - January 1997 **Mr. Reitsma**, together with **Mr. Pichel**, formed a new company, U-Vac, N.V., for the purposes of furthering the fraud upon **ISI**, including *inter alia* registering the **CombiVac™** and **U-VAC™** trademarks of **ISI** as being the trademarks of U-Vac, N.V., and claiming for itself patent rights which were legally those of **ISI**.

144. On information and belief, in or about December 1996 - January 1997, **The Defendant Law Firm** began representing U-Vac N.V and furthering the fraud being thereby perpetrated upon **ISI** by **Mr. Reitsma, Mr. Pichel** and U-Vac, N.V.

145. In November 1998, Mr. Aschman contacted **The Defendant Law Firm** to inquire about **ISI Client Funds retained by The Defendant Law Firm**.

146 At that time Mr. Aschman was advised that **ISI** was still a client in good standing with **The Defendant Law Firm**, but that another company, presumed by **The Defendant Law Firm** to possibly have some relationship with **ISI**, namely U-Vac, N.V., was not in good standing as to its accounts with **The Defendant Law Firm**.

147. When Mr. Aschman inquired whether there was an overpayment still being held by **The Defendant Law Firm**, or in the alternative applied to any additional unbilled services performed by **The Defendant Law Firm**, he was informed that **The Defendant Law Firm** would have to review their records to determine whether or not this might have been the case.

148. Thereafter, **The Defendant Law Firm** acknowledged that, upon reviewing its records, it had determined that the amount of $ 1,839.40 which **ISI** had previously paid to **The Defendant Law Firm** was still being retained by **The Defendant Law Firm** to be applied to any future legal services which **ISI** might require from **The Defendant Law Firm**.

149. Upon the request of Mr. Aschman, **The Defendant Law Firm** refunded to **ISI** the amount of $1,839.40 by its check number 486 dated November 4, 1998 (a copy of which is attached hereto as **Exhibit Z**).

COUNT I
Federal Lanham Act Violations

150. For Count I of its complaint against **The Defendant Law Firm, ISI** herewith realleges and incorporates herein by reference Numbered Paragraphs 1 through 149 of its Complaint.

151. The acts of **The Defendant Law Firm** in contacting **APP**, in the United States, as complained of hereinabove, constitute a violation of **ISI's** rights under Section 43(a)(1)(B) of the Federal Lanham Act.

152. By reason of **The Defendant Law Firm's** violation of **ISI's** rights under Section 43 of the Federal Lanham Act, **ISI** has been damaged in an amount not presently calculated but believed to be in excess of $11,860,000.00.

153. **The Defendant Law Firm's** violation of **ISI's** rights under Section 43 of the Federal Lanham Act has been intentional, willful, wanton, malicious and in reckless disregard for the rights of **ISI**.

154. **The Defendant Law Firm's** violation of **ISI's** rights under Section 43 of the Federal Lanham Act constitutes an intentional, willful and wanton and malicious tort against the property and person of **ISI**, by reason of which any award of damages in this case is not be dischargeable in bankruptcy, either by the partnership of Scott & Aylen or any of the individual members of that partnership.

155. **The Defendant Law Firm's** violation of **ISI's** rights under Section 43 of the Federal Lanham Act (constitutes an exceptional case under the provisions of that Act, by reason of which any damage awarded by The Court upon Count I of **ISI's** Complaint against **The Defendant Law Firm** should be increased by three times the amount awarded.

COUNT II
Deceptive Trade Practices

156. For Count II of its complaint against **The Defendant Law Firm, ISI** herewith realleges and incorporates herein by reference Numbered Paragraphs 1 through 149 of its Complaint.

157. The acts of **The Defendant Law Firm** in contacting **APP**, in the United States, as complained of hereinabove, constitute a violation of **ISI's** rights under the Uniform Deceptive Trade Practices Act, as adopted by the various states.

158. By reason of **The Defendant Law Firm's** violation of **ISI's** rights under Uniform Deceptive Trade Practices Act, **ISI** has been damaged in an amount not presently calculated but believed to be in excess of $11,860,000.00.

159. **The Defendant Law Firm's** violation of **ISI's** rights under Uniform Deceptive Trade Practices Act has been intentional, willful, wanton, malicious and in reckless disregard for the rights of **ISI**.

160. **The Defendant Law Firm's** violation of **ISI's** rights under Uniform Deceptive Trade Practices Act constitutes an intentional, willful and wanton and malicious tort against the property and

In The United States District Court
For The Northern District of Illinois
Eastern Division

ISI International, Inc., an Illinois corporation,	:	
Plaintiff,	:	Civil Action No. 98 C 7614
vs.	:	
Borden Ladner Gervias, a partnership, successor to Scott & Aylen	:	Judge Conlon
Defendant.	:	JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED AND VERIFIED COMPLAINT

For its First Amended And Verified Complaint against Defendant, Borden Ladner Gervias, substituted by Order of the United States Court of Appeals for the Seventh Circuit for the originally named defendant, Scott & Aylen, Plaintiff, ISI International, Inc., alleges as follows:

I. THE PARTIES, JURISDICTION AND VENUE

1. ISI International, Inc. (hereinafter "ISI") is an Illinois corporation with a principal place of business at 72 Treasure Lane, Riverwoods, Illinois, which was incorporated on January 6, 1996.

2. On information and belief, the originally named defendant, Scott & Aylen (hereinafter "S&A") was an Ontario partnership engaged in, *inter allia*, the practice of law.

3. On information and belief, in or about June of 1999, S&A merged with another Ontario partnership, Borden & Elliot (hereinafter "B&E") to form a new Ontario partnership, Borden Elliot Scott & Aylen (hereinafter "BES&A").

Reitsma, and no litigation was pending anywhere in the world on behalf of Reitsma which related to the subject matter in the APP Letter and the Medimade Letters, and S&A was not aware of any litigation for patent infringement which could have been filed anywhere on behalf of Reitsma when the APP Letter and the Medimade Letters were sent.

COUNT I

Federal Lanham Act Violations

65. For Count I of its complaint against Defendant, ISI realleges and incorporates herein by reference Numbered Paragraphs 1 through 64 of its Complaint.

66. The representations in the APP Letter constitute false representations in violation of ISI's rights under Section 43(a) of the Federal Lanham Act.

67. By reason of S&A's false representations in its APP Letter in violation of Section 43(a) of the Federal Lanham Act, ISI has been damaged in an amount not presently calculated, but believed to be not less than $ 50,000,000.00 (FIFTY MILLION DOLLARS, US).

68. S&A's false representations in its APP Letter were made intentionally, willfully, wantonly, maliciously and in reckless disregard of ISI's rights, all for the purpose of injuring ISI and ISI's business, by reason of which this case is an exceptional case under the provisions of that Act, whereby ISI is entitled to have the award of its actual damages increased three times to an amount believed to be not less than $150,000,000.00 (ONE HUNDRED AND FIFTY MILLION DOLLARS).

COUNT II

Common Law Unfair Competition Trade Disparagement, Trade Defamation and Slander of Title